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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1922.

No. [redacted]107

THE CUDAHY PACKING COMPANY OF NEBRASKA, A CORPORATION,

Plaintiff in Error,

vs.

MARY ANN PARRAMORE, AS WIDOW AND AS GUARDIAN OF THE PERSONS AND ESTATES OF OWEN PARRAMORE, RUTH PARRAMORE AND LUELLA PARRAMORE, MINOR CHILDREN OF JOSEPH PARRAMORE, DECEASED, AND THE INDUSTRIAL COMMISSION OF UTAH,

Defendants in Error.

ERROR TO SUPREME COURT OF STATE OF UTAH.

BRIEF OF PLAINTIFF IN ERROR, IN OPPOSITION TO MOTION OF DEFENDANTS IN ERROR TO DISMISS AND AFFIRM.

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for The Cudahy Packing Company of Nebraska, Plaintiff in Error.

DUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1922.

No. 547

THE CUDAHY PACKING COMPANY OF NEBRASKA, A CORPORATION,

Plaintiff in Error,

vs.

MARY ANN PARRAMORE, AS WIDOW AND AS GUARDIAN OF THE PERSONS AND ESTATES OF OWEN PARRAMORE, RUTH PARRAMORE AND LUELLA PARRAMORE, MINOR CHILDREN OF JOSEPH PARRAMORE, DECEASED, AND THE INDUSTRIAL COMMISSION OF UTAH,

Defendants in Error.

ERROR TO SUPREME COURT OF STATE OF UTAH.

BRIEF OF PLAINTIFF IN ERROR, IN OPPOSITION TO MOTION OF DEFENDANTS IN ERROR TO DISMISS AND AFFIRM.

(Italics ours.)

STATEMENT OF CASE.*

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

On page 6 of brief of defendants in error appears the statement that the ruling of the Supreme Court of Utah

*This case is before this court on writ of error and also on application for certiorari.

(herein referred to as "State Court") on the Utah statute, on the question as to "Whether or not the employer can be made to compensate the employe for an injury, the result of an accident not a part of the hazard of the industry," was favorable to plaintiff in error. This is entirely incorrect. The court construed and applied the Utah statute in this case so as to make plaintiff in error liable for an injury not resulting from a hazard of the industry, and bearing no causal relation thereto, thereby depriving plaintiff in error of its constitutional rights.

An examination of the record will show that the uncontradicted facts are that the plaintiff in error, The Cudahy Packing Company of Nebraska, a corporation (sometimes referred to herein as "Cudahy Company"), owns and operates a packing plant at North Salt Lake, Utah, and that on August 9, 1921,

Joseph Parramore,	A stationary engineer, working by the day (Rec., 30, 38),†
on his way to work,	before his employment had begun (Rec., 26, 32, 42, 43),
while riding in a friend's automobile,	Cudahy Company having no interest in it and in no way furnishing it (Rec., 24, 31, 35, 54, 55, 70, 72),
on a public highway,	used by many persons other than the employees of Cudahy Company, and not on its premises (Rec., 26, 27, 39-43).
was struck at a railroad crossing,	on the main line, and not a part of the switching facilities of the plant (Rec., 23, 24, 54, 70, 72)
by a railroad engine,	not owned or operated by, or in the service of Cudahy Company (Rec., 24, 43, 44, 54),

†The designation "Rec" refers to pages of printed record.

and killed, at a point on the county road about 100 feet from the entry to Cudahy Company's plant (Rec., 36, 37).

The employment of deceased was within certain hours and within the plant. Outside of the plant and outside of those hours he had no duties.

Section 3113 of the Utah Workmen's Compensation Act, as amended, provides compensation for "Every such employee who is killed by accident arising out of, *or* in the course of, his employment, wheresoever such injury has occurred," etc.

Mary Ann Parramore, as the widow of Joseph Parramore, and as guardian of their three children, was awarded compensation under this act by The Industrial Commission of Utah (herein referred to as "Commission"). The Supreme Court of Utah (a court of last resort) affirmed the award. (207 Pac. 148.)

In the State Court there was drawn in question by plaintiff in error

(a) The validity, under the Fourteenth Amendment, of the Utah statute as construed and applied.

(b) The validity, irrespective of the statute, of the action of the Commission (it being contended that it acted arbitrarily and without jurisdiction) in depriving plaintiff in error (as it did) of rights, privileges and immunities claimed under the Fourteenth Amendment.

These federal questions were in the State Court:

(a) Specially claimed,

(b) Properly set up,

(c) Necessary to a determination of the case,

(d) Specifically considered,

(e) Actually passed upon,

(f) Ruled adversely to plaintiff in error,

and have been duly reserved by the assignments of error herein. (Rec., 66-68, 76-77, 88-90.)

POINTS AND AUTHORITIES.

THE QUESTIONS HERE INVOLVED ARE FEDERAL QUESTIONS.

I.

The question whether or not the Utah statute as construed and applied is repugnant to the Constitution of the United States is one which this court must consider upon writ of error.

Section 237 Jud. Code, as Amended, Act Dec. 23, 1914, C. 2, Act Sept. 6, 1916, C. 448, Sec. 2, and Act Feb. 17, 1922, C—, 42 Stat.

Dahnke-Walker Milling Co. v. *Bondurant,* 42 Sup. Ct. Rep. 106, 107, 108; 66 L. Ed. 114, 115, 116.

Merchants Nat'l Bank v. *Richmond,* 256 U. S. 635, 637.

II.

The validity of the Utah statute is involved in this case. A statute may be valid as applied to one set of facts and invalid as applied to another.

Dahnke-Walker Milling Co. v. *Bondurant,* 42 Sup. Ct. Rep. 106, 108; 66 L. Ed. 114, 116.

III.

The facts being undisputed, the question whether under the federal constitution the Utah statute as construed and applied, and the question whether the action

of the state court in affirming the award, deprives plaintiff in error of its rights under the Fourteenth Amendment, are

(a) Federal questions, and

(b) Questions of law.

Truax v. *Corrigan,* 66 L. Ed. 132, 134, 135; 42 Sup. Ct. Rep. 147.

Dahnke-Walker Milling Co. v. *Bondurant, supra.*

Merchants Nat'l Bank v. *Richmond,* 256 U. S. 635, 641.

Jones Nat'l Bank v. *Yates,* 240 U. S. 541, 552, 553.

Int. Comm. Com. v. *Louisville & Nashville R. R. Co.,* 227 U. S. 88, 91, 92.

The contention that there is no evidence to support the action of the state court raises a purely legal question. (See authorities, *supra,* this Point III and Point V.) A finding upon undisputed facts is a finding of law, even though it may be styled a finding of fact. These rules are of familiar application in compensation cases.

Bates & Rogers Cons. Co. v. *Allen,* 183 Ky. 815; 210 S. W. 467, 471.

Hochspeier v. *Ind. Bd.* 278 Ill. 523; 116 N. E. 121; L. R. A. (1918 F) 227.

Glatzl v. *Stump* (N. Y.), 114 N. E. 1053, 1054.

In re Fisher, 220 Mass. 581; 108 N. E. 361.

IV.

In determining the legal effect of facts in evidence as a deprivation of plaintiff in error's rights under the Fourteenth Amendment, this court is

"at as full liberty to consider them as was the State

Supreme Court. * * * This court must analyze the facts and draw its own inferences as to their ultimate effect and is not bound by the conclusions of the State Supreme Court in this regard."

Truax v. *Corrigan,* 66 L. Ed. 132, 134, 135; 42 Sup. Ct. 127.

V.

If a federal right has been denied as the result of a finding of fact which is without support in the evidence, this court may examine the evidence to the extent necessary to give the plaintiff in error the benefit of the federal right asserted.

Truax v. *Corrigan,* 66 L. Ed. 132, 134, 135; 42 Sup. Ct. 127.

Jones Nat'l Bank v. *Yates,* 240 U. S. 541, 552, 553.

Southern Pac. Co. v. *Schuyler,* 227 U. S. 601, 611.

North Carolina R. R. Co. v. *Zachary,* 232 U. S. 248, 258, 259.

Carlson v. *Curtiss,* 234 U. S. 103, 106.

Kansas City So. Ry. Co. v. *Albers Com. Co.* 223 U. S. 573, 591, 592.

Creswill v. *Knights of Pythias,* 225 U. S. 246, 261.

Merchants Nat'l Bank v. *Richmond,* 256 U. S. 635, 638.

VI.

The question whether or not (irrespective of the statute) the action of the state court in affirming the award is repugnant to the Fourteenth Amendment is a federal question and one which this court may review on writ of error.

Prudential Insurance Company of America v. *Cheek* (1922), 42 Sup. Ct. Rep. 518, 523, 524; 66 L. Ed. 626, 634, 635.

C. B. & Q. R. R. Co. v. *Chicago,* 166 U. S. 226, 241.

Scott v. *McNeal,* 154 U. S. 34, 45.

Schofield, Constitutional Law & Equity (1921), 5-37.

Twining v. *New Jersey,* 211 U. S. 78.

Ex Parte Virginia, 100 U. S. 339, 346, 347.

BRIEF OF ARGUMENT.

ERRORS RELIED ON.

Plaintiff in error here contends (as more fully appears from the assignments of error (Rec., 88-90) that the decision of the state court in affirming the award of the Commission deprives it of its property without due process of law, and denies to it the equal protection of the laws contrary to Section I of the Fourteenth Amendment of the Constitution of the United States, in that

1. Section 3113 of the Utah Statute, as construed and applied in this cause, is arbitrary, oppressive and unreasonable in that it authorizes the award of compensation for death resulting from an accident not attributable to the employment of deceased and not in any way connected therewith.
2. Whether or not the said Act (or said Section 3113 thereof) is constitutional and valid, the action of the state court was arbitrary, unreasonable, unjust and oppressive, unsupported by evidence, and in disregard of established law.
3. The Commission was wholly without jurisdiction because the accident was not an industrial accident and did not result from any hazard of petitioner's business and was in no way connected with the employment of the deceased.

REVIEWABILITY ON WRIT OF ERROR.

Section 237 of the Judicial Code (*supra*), provides that a review may be had on writ of error in this court in

> "any suit * * * where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity."

The quoted language of the statute was construed in the case of *Dahnke-Walker Milling Co.* v. *Bondurant*, 42 Sup. Ct. Rep. 106, 107, 108; 66 L. Ed. 114, 115, 116. In that case the plaintiff in error (as in the instant case) claimed a right or immunity under the Constitution of the United States and also insisted that as to the transaction in question a state statute was void. This court said (42 Sup. Ct. 107-108):

> "The court did not accede to the insistence, but applied and enforced the statute. Of course that was an affirmation of its validity when so applied. (Citing numerous authorities.) * * * The case is therefore of the class described in the first of the provisions which we have quoted from the jurisdictional section. That the statute was not claimed to be invalid in toto and for every purpose does not matter. A statute may be invalid as applied to one state of facts and yet valid as applied to another. (Citing authorities.) * * * Besides, a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage. (Citing authorities.) * * * Neither does it matter on what ground the court upheld and enforced the statute. The provisions quoted from the jurisdictional section show that in cases where the validity of a state statute is drawn in question because of the alleged repugnance to the constitution, the mode of review depends on the way in which the state court resolves the question. If it be resolved in favor of the validity of the statute, the review may be on writ of error; and if it be resolved against the validity the review can only be on writ of certiorari. The provisions take no account of the particular grounds or reasons on which the decision is put."

It is further contended that (irrespective of the validity of the Utah statute) the action of the state court was in itself so arbitrary and baseless and so wholly unsupported by evidence as to deny to plaintiff in error rights guaranteed to it under the Fourteenth Amendment. Such

a question may be considered by this court on writ of error.

In *Prudential Insurance Company of America* v. *Cheek*, 42 Sup. Ct. Rep. 516, at page 523, this court said:

> "It is assigned for error, *aside from the statute*, that the decision of the Missouri court sustaining the cause of action under the second count amounts to depriving plaintiff in error of property without due process of law. This point was set up properly in the state courts as a special claim of immunity under the Fourteenth Amendment; and although, under Section 237, Judicial Code, as amended by the Act of September 6, 1916, c. 448, 39 Stat. 726 (Comp. St. Sec. 1214), it could not have been made the basis of a writ of error from this court, but only a writ of certiorari, we think that, by the fair intendment of the act, since the record has been brought here properly under a writ of error because involving the constitutionality of a statute, plaintiff in error is at liberty to assign any other ground of error therein, based upon an adverse decision by the state court of last resort upon any right, title, privilege, or immunity especially set up or claimed under the Constitution or laws of the United States."

Counsel for defendants in error (Brief, p. 5) state that:

> "It appears that the Utah court based its final decision squarely upon two issues; the first a construction of a state statute, the second, an analysis of the evidence in the record."

As previously pointed out, plaintiff in error contends, here, as in the state court, that the Utah statute as construed and applied is repugnant to the Fourteenth Amendment, and also that the action of the state court in affirming the award is unwarranted and unauthorized because there was no evidence to support it. It has been said by this court in *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.* 227 U. S. 88, 91, that:

> "A finding without evidence is arbitrary and

baseless * * * and comes under the Constitution's condemnation of all arbitrary exercise of power."

Thus it appears that the plaintiff in error here attacks the decision of the state court on the precise points on which defendants in error contend that that decision was based.

We do not deem it necessary upon this preliminary motion to discuss the merits of the case.

It is vital that this court should at this time determine whether or not, under the Federal Constitution, state courts or state legislature may compel employers to provide compensation for all injuries to employees wherever, whenever and however they may occur. May an employer under the Constitution be compelled to become the general insurer of the lives and safety of his employees? Plaintiff in error contends that it may not be so compelled. This case involves that question.

The record discloses a real and substantial controversy between the parties, unaffected by any change in conditions. Counsel's suggestion that the questions involved have become moot is of itself frivolous.

The motion to dismiss and affirm should be overruled.

Respectfully submitted,

GEORGE T. BUCKINGHAM,
THOMAS CREIGH,
R. B. WEBSTER,
STEPHEN E. HURLEY,
Attorneys for The Cudahy Packing Company of Nebraska, Plaintiff in Error.

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No. 107

In the Supreme Court of the United States

October Term 1921

THE CUDAHY PACKING COMPANY OF NEBASKA, a corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the persons and estates of OWEN PARRAMORE, RUTH PARRAMORE and LUELLA PARRAMORE, minor children of JOSEPH PARRAMORE, deceased, and THE INDUSTRIAL COMMISSION OF UTAH.

MOTION TO DISMISS AND AFFIRM

and

NOTICE OF MOTION to DISMISS AND AFFIRM

HARVEY H. CLUFF,
Attorney General of Utah.
WILLIAM A. HILTON
Assistant Attorney General of Utah
Attorneys for Defendant in Error
J. ROBERT ROBINSON
FREDERICK C. LOOFBOUROW
of Counsel.

In the Supreme Court of the United States

October Term 1921

THE CUDAHY PACKING COMPANY OF NEBASKA, a corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the persons and estates of OWEN PARRAMORE, RUTH PARRAMORE and LUELLA PARRAMORE, minor children of JOSEPH PARRAMORE, deceased, and THE INDUSTRIAL COMMISSION OF UTAH.

MOTION TO DISMISS AND AFFIRM

Comes now the appellee by this counsel appearing in that behalf and move the court to dismiss the appeal in the above entitled cause for want of jurisdiction because the judgment from which the said appeal purports to have been taken is the judgment of the Supreme Court of one of the United States, to-wit, the Supreme Court of the State of Utah.

And the said appellee, by counsel as aforesaid, also moves the court to affirm the said judgment from which said appeal purports to have been taken because altho the record in said cause may show that this court has

jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only.

This motion is based upon the following reasons, to-wit.

1. That no federal question is involved in this case.

2. That no federal question was necessary to the determination of this case in the Supreme Court in the State of Utah.

3. That the decision of this case by the Supreme Court of the State of Utah rests upon independent grounds not involving any federal questions.

4. That the only question involved in this case is the construction of a statute of the State of Utah and its application to the fact disclosed by the evidence in the record and those questions have been decided by the Supreme Court of the State of Utah.

5. That the validity of a statute of the State of Utah is not involved in this case.

HARVEY H. CLUFF,
Attorney General of Utah.
WILLIAM A. HILTON
Assistant Attorney General of Utah

Attorneys for Defendant in Error

J. ROBERT ROBINSON

FREDERICK C. LOOFBOUROW
of Counsel.

Received copy of the foregoing Motion to Dismiss and Affirm at Salt Lake City, Utah, this the 2nd day of September, A. D. 1922.

R. B. WEBSTER by B. L. RICH
Attorneys for Cudahy Packing Company of Nebraska, Plaintiff in Error.

In the Supreme Court of the United States

October Term 1921

THE CUDAHY PACKING COMPANY OF NEBASKA, a corporation,

vs.

MARY ANN PARRAMORE, as Widow and as Guardian of the persons and estates of OWEN PARRAMORE, RUTH PARRAMORE and LUELLA PARRAMORE, minor children of JOSEPH PARRAMORE, deceased, and THE INDUSTRIAL COMMISSION OF UTAH.

NOTICE OF MOTION to DISMISS AND AFFIRM

You are hereby notified that the Motion to dismiss the appeal and affirm the judgment of the Supreme Court in the above entitled case will be brought on for hearing in the above entitled Court on Monday, the 16th day of October, A. D. 1922.

HARVEY H. CLUFF,
Attorney General of Utah.

WILLIAM A. HILTON
Assistant Attorney General of Utah

Attorneys for Defendant in Error

J. ROBERT ROBINSON

FREDERICK C. LOOFBOUROW
of Counsel.

Receive copy of the foregoing Notice this the 2nd day of September, A. D. 1922.

R. B. WEBSTER by B. L. RICH
Attorneys for Cudahy Packing Company of Nebraska, Plaintiff in Error.

END

OF

CASE